

FEDERAL RESERVE SYSTEM

Live Oak Bancshares, Inc.
Wilmington, North Carolina

Order Approving Notice to Engage in Nonbanking Activities

Live Oak Bancshares, Inc. (“Live Oak”), Wilmington, North Carolina, has requested the Board’s approval under sections 4(c)(8) and 4(j) of the Bank Holding Company Act (“BHC Act”)¹ and section 225.24 of the Board’s Regulation Y² to acquire Government Loan Solutions, Inc. (“GLS”), Cleveland, Ohio.³ GLS provides support services in connection with the settlement, accounting, and securitization processes for government-guaranteed loans, including loans originated under section 7(a) of the Small Business Administration Act (“SBA”) and U.S. Department of Agriculture (“USDA”) loan programs.

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the Federal Register (77 Federal Register 73467 (2012)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Live Oak, with consolidated assets of approximately \$342.9 million, controls deposits of approximately \$288.8 million, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ Live Oak controls one insured depository institution, Live Oak Banking Company (“Bank”), Wilmington, that operates one office in North Carolina.

¹ 12 U.S.C. §§ 1843(c)(8) and 1843(j).

² 12 CFR 225.24.

³ Live Oak indirectly would acquire a controlling interest in SB Indexes, LLC (“SB Indexes”) and Secondary Market Access, LLC (“SMA”), both of Cleveland, Ohio. GLS owns 33 percent of SB Indexes. GLS and two management officials of GLS own a combined total of 51 percent of SMA. SB Indexes and SMA are not currently conducting any operations.

⁴ Asset and nationwide deposit data are as of December 31, 2012.

As a result of the proposed acquisition, Live Oak would engage in the following nonbanking activities:

- (1) making, acquiring, brokering, or servicing loans or other extensions of credit for the account of GLS or the account of others, in accordance with 12 CFR 225.28(b)(1);
- (2) activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit, as determined by the Board, including performing appraisals of real estate and tangible and intangible personal property, including securities, in accordance with 12 CFR 225.28(b)(2);
- (3) acting as investment or financial advisor to any person, including furnishing general economic information and advice, general economic statistical forecasting services, and industry studies, in accordance with 12 CFR 225.28(b)(6);
- (4) providing management consulting advice on any matter to unaffiliated depository institutions, including commercial banks, in accordance with 12 CFR 225.28(b)(9); and
- (5) providing data processing, data storage and data transmission services, facilities, databases, advice, and access to such services, facilities, or databases by any technological means, in accordance with 12 CFR 225.28(b)(14).

The Board has determined by regulation that these proposed activities are activities closely related to banking for purposes of section 4(c)(8) of the BHC Act. Live Oak has committed to conduct the proposed activities in accordance with the limitations set forth in Regulation Y and the Board's orders.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposed acquisition "can reasonably be expected to produce benefits to the public...that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or

financial system.”⁵ As part of its evaluation of these factors, the Board considers the financial and managerial resources of the companies involved and the effect of the proposal on competition in the relevant markets.⁶

In assessing the financial and managerial resources of the companies involved, the Board has considered, among other things, information provided by Live Oak, public comments on the proposal, confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information.

In evaluating the financial factors of this proposal, the Board has considered a number of factors, including capital adequacy and earnings performance. Live Oak and Bank are well-capitalized and would remain so after consummation of the proposed transaction. The transaction would be structured as a share exchange, with the outstanding shares of GLS’s common stock being exchanged for shares of Live Oak. Asset quality and earnings prospects are consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Live Oak and Bank, including assessments of their management expertise, internal controls, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant financial supervisory agencies with the organization and its records of compliance with applicable banking laws and with anti-money-laundering laws.

The Board also considered public comments that expressed general concern about Live Oak’s capacity to supervise the proposed activities. Live Oak has represented to the Board that the necessary controls and reporting requirements would be implemented in order to manage effectively GLS as a nonbank subsidiary of Live Oak. These controls and reporting requirements include policies and procedures for the

⁵ 12 U.S.C. § 1843(j)(2)(A).

⁶ 12 CFR 225.26.

management of financial risk and treasury operations, formal operating and strategic planning processes, and review by Live Oak's internal and external auditors, which report directly to the audit committee of Live Oak's board of directors. Live Oak and Bank are considered to be well managed, and the policies and procedures to be implemented at GLS are considered satisfactory.

Based on all the facts of record, including a review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

In addition, the Board has considered the competitive effects of the proposal in light of all the facts of record. Live Oak and GLS do not provide the same nonbanking services and, therefore, do not compete in the same market for any nonbanking services. As a result, the proposed acquisition would not have any effect on competition. Based on all the facts of record, the Board concludes that the proposed acquisition would have no significantly adverse competitive effects in any relevant market.

Section 4(j)(2)(A) of the BHC Act also requires the Board to consider whether the proposal is likely to pose a significant risk to the stability of the United States banking or financial system. Given the size of the entities involved in this transaction, the types of activities proposed, and the availability of substitute providers of the proposed financial services, this transaction would not result in a significant increase in the risk to or interconnectedness of the financial system. Based on these and all the other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

The Board expects that the proposed acquisition would result in benefits to the public that outweigh any possible adverse effects from the transaction. GLS provides automation and valuation services for financial participants in SBA and USDA loan programs. The acquisition of GLS by Live Oak will enhance the ability of GLS to provide its services to lenders who make SBA and USDA loans, thereby potentially

expanding the availability of those services. The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or a significant risk to the stability of the United States banking or financial system that would outweigh the public benefits of the proposal discussed above.⁷

Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits that it must consider under section 4(j)(2) of the BHC Act is consistent with approval of the proposal.

⁷ Three commenters opposed the proposal on Community Reinvestment Act (“CRA”) (12 U.S.C. § 2901 *et seq.*) grounds. A depository institution’s CRA performance record is not a statutory factor in evaluating a notice to acquire a nondepository institution under section 4 of the BHC Act. Nevertheless, the Board considered the substance of the comments in evaluating the balance of public benefits likely to result from the transaction. The Board consulted with the Federal Deposit Insurance Corporation (“FDIC”), Bank’s primary federal regulator, and reviewed Bank’s most recent CRA performance evaluation (“2010 Evaluation”). The FDIC has determined that the CRA performance of Bank is “Satisfactory,” “given the strong performance in the loans and investments and grants criteria.” 2010 Evaluation, p.2. Moreover, the 2010 Evaluation did not identify any violations of antidiscrimination laws or regulations or uncover evidence of discriminatory or other illegal credit practices. Bank has indicated it has complied in all respects with its approved CRA Strategic Plan since the 2010 Evaluation. The commenters also asserted that Bank should not have received credit under the lending test for a particular loan in Bank’s 2010 Evaluation. The FDIC evaluated the loan and determined that it met the CRA-qualifying criteria for community development loans. The commenters also questioned whether Live Oak would expand its CRA commitments “to serve in its expanded markets” in view of this proposal. Acquisition by a bank holding company of a nondepository institution under section 4 of the BHC Act does not result in an expansion of an institution’s CRA assessment area. See 12 CFR 228.41.

Based on the foregoing the Board has determined that the notice should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Live Oak with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),⁸ and to the Board's authority to require such modification or termination of the activities of Live Oak and any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

This transaction shall not be consummated later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,⁹ effective August 14, 2013.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁸ 12 CFR 225.7 and 225.25(c).

⁹ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.